

§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

- (1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;
- (2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;
- (3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.
- (4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ($\frac{1}{2}$ of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent ($\frac{1}{2}$ of 1%), the Commissioner shall round downward to the lower one-half of one percent ($\frac{1}{2}$ of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as

the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

(a1) Subject to federal requirements, when a natural person applies for a home loan primarily for personal, family, or household purposes, the lender shall comply with the provisions of this subsection.

- (1) Not later than the date of the home loan closing or three business days after the lender receives an application for a home loan, whichever is earlier, the lender shall deliver or mail to the applicant information and examples of amortization of home loans reflecting various terms in a form made available by the Commissioner of Banks. The Commissioner of Banks shall develop and make available to home loan lenders materials necessary to satisfy the provisions of this subsection.
- (2) Not later than three business days after the home loan closing, the lender shall deliver or mail to the borrower an amortization schedule for the borrower's home loan. Provided, however, that a lender shall not be required to provide an amortization schedule unless the loan is a fixed rate home loan that requires the borrower to make regularly scheduled periodic amortizing payments of principal and interest; and provided further that, with respect to a construction/permanent home loan, the amortization schedule must be provided only with respect to the permanent portion of the home loan during which amortization occurs.
- (3) If the home loan transaction involves more than one natural person, the lender may deliver or mail the materials required by this subsection to any one or more of such persons.
- (4) This subsection does not apply if the home loan applicant is not a natural person or if the home loan is for a purpose other than a personal, family, or household purpose.

(b) Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.

- (1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars (\$150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.
- (2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

(c) If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

- (1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

- a. Loan application, origination, commitment, and interest rate lock fees;
 - a1. Fees to administer a construction loan or a construction/permanent loan, including inspection fees and loan conversion fees;
 - b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;
 - c. Assumption fees to the extent permitted by G.S. 24-10(d);
 - d. Appraisal fees to the extent permitted by G.S. 24-10(h);
 - e. Fees and charges to the extent permitted by G.S. 24-8(d); and
 - f. Additional fees and charges, however individually or collectively denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars (\$150.00).
- (2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:
- a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;
 - a1. Fees which do not exceed one quarter of one percent (1/4 of 1%) of the principal amount of the loan if the principal amount of the loan is less than one hundred fifty thousand dollars (\$150,000), or one percent of the principal amount of the loan if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or more, for the conversion of a variable interest rate loan to a fixed interest rate loan, of a fixed interest rate loan to a variable interest rate loan, of a closed-end loan to an open-end loan, or of an open-ended loan to a closed-end loan;
 - b. Assumption fees to the extent permitted by G.S. 24-10(d);
 - c. Appraisal fees to the extent permitted by G.S. 24-10(h);
 - d. Fees and charges to the extent permitted by G.S. 24-8(d); and
 - e. If no fees are charged under subdivision (c)(2)b. of this section, additional fees and charges, however individually or collectively denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars (\$150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loans or investments regulated by G.S. 53C-5-3 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units or secured by an equivalent first security interest in a manufactured home.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may contract to defer the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree that deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

- (1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:
 - a. The borrower is a natural person;
 - b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and
 - c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.
- (2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:

- a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
- b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars (\$50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
- c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.
- d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.
- e. A lender may charge a deferral fee under this subsection for deferring the payment of all or part of one or more regularly scheduled payments, regardless of whether the deferral results in an extension of the loan maturity date or the date a balloon payment is due. A modification or extension of the loan maturity date or the date a balloon payment is due which is not incident to the deferral of a regularly scheduled payment shall be considered a modification or extension subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a

home loan. (1973, c. 1119, ss. 1, 2; 1975, c. 260, s. 1; 1977, c. 542, ss. 1, 2; 1979, c. 362; 1983, c. 126, s. 4; 1985, c. 154, s. 1; c. 381, ss. 1, 2; 1987, c. 444, ss. 1, 3, 4; c. 853, s. 4; 1989, c. 17, ss. 13, 14; 1999-332, s. 1; 2000-140, ss. 40(a), 40(b); 2001-340, s. 1; 2001-413, s. 9; 2001-487, s. 56; 2012-56, s. 6; 2014-115, s. 31.)